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In the Supreme Court of the United States

OCTOBER TERM, 1945

No. 749

PEOPLE OF THE STATE OF ILLINOIS, EX REL. ROBERT L. GORDON, DIRECTOR OF LABOR, PETITIONER

v.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The Circuit Court of Cook County, Illinois, rendered no opinion. The opinion of the Supreme Court of Illinois (R. 41–54) is reported in 391 Ill. 29.

JURISDICTION

The judgment of the Supreme Court of Illinois was rendered on September 17, 1945. (See R. 41, 55.) The time for filing a petition for a writ of certiorari was extended by the Court until January 16, 1946. (R. 56.) The petition for a

writ of certiorari was filed January 15, 1946, and was granted February 25, 1946. (R. 56.) The jurisdiction of this Court is invoked under Section 237 (b) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether the claim of the United States against the Advertising Review Publishing Company for unpaid capital stock taxes, insurance contribution taxes, and unemployment compensation taxes, is entitled to prior payment by virtue of Section 3466 of the Revised Statutes over state claims against the company for unpaid unemployment compensation contributions levied by Illinois statute.

STATUTES INVOLVED

The statutes involved are printed in the Appendix, *infra*, pp. 35–39.

STATEMENT

The facts[1] may be stated as follows:

On January 9, 1939, the Advertising Review Publishing Company, a corporation, made a general assignment of all its property and assets to William Fisher, as trustee for the benefit of its creditors. The trustee converted the assets to

[1] The Circuit Court of Cook County made some findings of fact (R. 17–18), but they are not complete with respect to the issue before the Court. Other facts appear in the pleadings and in the opinion of the Supreme Court of Illinois.

cash, realizing the amount of $1,734.40 therefor, which has since been reduced to $1,010.81. (R. 17–18.)

The Collector of Internal Revenue filed claims with the trustee for capital stock tax and penalty for 1939 in the sum of $58.73, plus interest at 6%; for federal unemployment compensation taxes and penalties for the year 1938 in the amount of $1,284.36, together with interest at 6% from January 11, 1940; and for federal insurance contributions taxes and penalties for the period commencing October 1, 1937, and ending December 31, 1938, in a total amount of $1,065.52, with interest at 6% from January 6, 1940. (R. 2.)

The Director of Labor of the State of Illinois also filed with the trustee claims for unemployment compensation contributions due the State of Illinois for the year 1938 in the amount of $721.29, with interest at 1% per month from January 25, 1939. (R. 3.)

On February 11, 1942, the trustee filed a complaint in interpleader in the Circuit Court of Cook County, Illinois, naming the Collector of Internal Revenue and the Director of Labor as defendants and asking instructions from the Court as to the disposition of the funds in his hands. (R. 1–4.) By order entered pursuant to stipulation the United States of America was

made a party defendant and the Collector of Internal Revenue was dismissed as a party. (R. 4–5.)

On April 2, 1943, the Director of Labor filed a complaint in the Circuit Court to foreclose a statutory lien for unemployment contributions under Section 26 (a) of the Illinois Unemployment Compensation Act. (R. 8–16.) On March 23, 1943, notice of this lien had been filed with the Office of the Recorder of Deeds, Cook County, Illinois. (R. 11, 15–16.)

The two proceedings were consolidated (R. 16) and by decree dated February 18, 1944, the funds in the amount of $1,010.81, remaining in the hands of the trustee after payment of proper expenses and costs of administration, were impounded with the Clerk of the Court and the trustee was discharged (R. 17–19). By order entered February 29, 1944, the Circuit Court decided that the lien of the Director of Labor be given priority to the extent of 90% of the funds on deposit with the Clerk and that the United States have priority as to the 10% remaining. (R. 19.)

The United States appealed from this order to the Appellate Court for the First District of Illinois, and on motion of the Director, the cause was transferred to the Supreme Court of Illinois on jurisdictional grounds. (R. 19, 42.)

On May 23, 1945, the Supreme Court filed its opinion reversing the Circuit Court (R. 21–33) and rendered judgment ordering the Circuit Court to enter a decree that the United States is entitled to priority of payment to the extent of the funds on deposit and ordering distribution accordingly (R. 34).

On June 16, 1945, the Director of Labor filed a petition for rehearing, (R. 35–40.) On September 17, 1945, the Supreme Court of Illinois denied the petition for rehearing (R. 40), and at the same time filed a modified opinion (R. 41–51), which, however, did not alter its directions to the Circuit Court to enter a decree that the United States is entitled to priority to the extent of the amounts on deposit. (R. 54).[2]

SUMMARY OF ARGUMENT

I

The claims of the United States for federal insurance contributions and federal unemployment compensation taxes, unless expressly excluded by Congress from the purview of Section 3466 of the Revised Statutes, are debts due the United States within the meaning of that section. There is no

[2] Both the original and modified opinions decided not only the instant case but also that of *People for the Use of Francis B. Murphy, Director of Labor* v. *Chicago Waste & Textile Co.*, No. 28474, now pending before this Court as No. 750. The modified opinion contained changes principally relating to the latter case.

express provision in the Social Security Act, under which these tax claims arose, relinquishing the priority, accorded to debts due the United States by Section 3466, with respect to these taxes. On the contrary, Congress prescribed in the Act that all available methods of collection, of which Section 3466 is one, should apply to these taxes.

Nor is there any provision in the Social Security Act, dealing with the acquisition of independent security by the United States or the distribution of the assets of an insolvent taxpayer, which is inconsistent with Section 3466.

Nor may any intent to relinquish federal priority be implied from the fact that the federal taxes and state contributions were both imposed in connection with a program to provide a social security system. Congress has indicated no policy of permitting states to collect contributions to the detriment of the federal revenue, which Section 3466 is designed to assure.

The provision for allowance of a credit, not in excess of 90%, against the federal unemployment compensation tax equal to the amounts paid by an employer to a state as contributions under a state law does not alter the nature of the federal tax, whatever its final amount, as a tax entitled to priority under Section 3466, nor does it elevate the contributions payable to the state to the dignity of a federal claim. Moreover, since no credit

for state payments is allowable against the federal insurance contributions tax, the priority of this tax is not impaired in any event, if any inference should be drawn that the credit provision affects the priority of the federal unemployment compensation taxes.

Finally, the claim of the State for contributions is not tantamount to a claim of the United States, so as to share equally with the claims of the United States under Section 3466 in the distribution of the insolvent debtor's estate.

II

The debtor in this case was insolvent within the meaning of Section 3466 and the state had only an inchoate general lien for the amount of the contributions due it. Consequently, since the claims of the United States against the debtor for capital stock, insurance contributions, and unemployment compensation taxes are debts due the United States, these claims are, under the express language of Section 3466, to be satisfied first.

ARGUMENT

I

FEDERAL INSURANCE CONTRIBUTIONS TAXES AND FEDERAL UNEMPLOYMENT COMPENSATION TAXES ARE DEBTS WITHIN THE MEANING OF SECTION 3466 OF THE REVISED STATUTES

This case is concerned with the question whether claims of the United States for capital

stock, federal insurance contributions, and federal unemployment compensation taxes have priority under Section 3466 of the Revised Statutes (Appendix, *infra*, p. 35) over a state claim for unemployment compensation contributions. The Supreme Court of Illinois held that the claim of the United States for insurance contributions taxes ($1,065.52, plus interest) had priority under that section over the claim of the State (R. 50–51) and since this amount exceeded the entire amount of the debtor's property available for distribution ($1,010.81) (R. 18), it awarded the amount to the United States (R. 54).[3]

The State of Illinois contends that the lower court erroneously applied the priority statute to "social security" taxes on the ground that such taxes were not intended by Congress to be included within the scope of Section 3466. (Br. 10–26.) Thus, although the Supreme Court of Illinois confined itself to a decision that the United States had priority for federal insurance contributions taxes alone, the State apparently does not distinguish these taxes from federal unemployment compensation taxes. We contend that both kinds of taxes are debts within the meaning of Section 3466, and, in any event, that

[3] The opinion of the Supreme Court of Illinois did not discuss the claim of the United States for capital stock taxes in the amount of $58.73, plus interest, but it will be clear from what is said above that these taxes also are entitled to priority over the State's claim.

the contributions taxes are clearly so, as the lower court held.

The federal insurance contributions taxes are for the period commencing October 1, 1937 and ending December 31, 1938, and they arose under Title VIII of the Social Security Act of 1935.[1] Section 801 of this title (Appendix, *infra*, pp. 35–36) levied an income tax on employees equal to a percentage of wages received in employment and Section 804 (Appendix, *infra*, pp. 36–37) levied an excise tax on employers equal to a percentage of wages paid in employment. The employees' tax was required to be withheld by the employer from wages paid the employee and to be paid by the employer to the Collector of Internal Revenue. Section 802 (Appendix, *infra*, p. 36). These taxes will sometimes hereinafter be referred to as "Title VIII" taxes.

The federal unemployment compensation taxes are for the year 1938 and they arose under the provisions of Title IX of the Social Security Act.[2] Section 901 of this title (Appendix, *infra*,

[1] For 1939 and succeeding years these taxes are imposed by the Federal Insurance Contributions Act, Chapter 9, Subchapter A, Internal Revenue Code, as amended (26 U. S. C. 1400, *et seq.*); which superseded Title VIII of the Social Security Act.

[2] For 1939 and subsequent years these taxes are levied by the Federal Unemployment Tax Act, Chapter 9, Subchapter C, Internal Revenue Code, as amended (26 U. S. C. 1600, *et seq.*), which superseded Title IX of the Social Security Act.

p. 37) imposed an excise tax on employers of eight or more persons equal to a percentage of wages paid with respect to employment. Against this tax, the employer was permitted by Section 902 (Appendix, *infra*, pp. 37–38) to credit an amount, not in excess of 90% of the tax, representing the contributions "paid by him" into an unemployment compensation fund maintained by a state under a federally approved unemployment compensation law. These taxes will sometimes hereinafter be referred to as Title IX taxes.

As this Court has already held, both the Title VIII and Title IX taxes are valid taxes, both are paid into the Treasury like internal revenue collections generally and are not earmarked in any way. *Helvering* v. *Davis*, 301 U. S. 619, 635; *Steward Machine Co.* v. *Davis*, 301 U. S. 548, 574; *United States* v. *New York*, 315 U. S. 510.

In view of this Court's decision in *United States* v. *Waddill Co.*, 323 U. S. 353, that Section 3466 applied to give the claim of the United States for federal unemployment compensation (Title IX) taxes priority over a landlord's rent lien and a claim for municipal taxes, it can not be seriously argued now that federal tax claims arising under either Title VIII or Title IX of the Social Security Act are not debts within the meaning of Section 3466.* While the Court was not asked

* Other courts also have held that federal social security taxes are entitled to be paid in full ahead of other claims

to decide whether the federal claim was superior to the claim of the State of Virginia for unemployment compensation contributions, this point being conceded, it seems apparent that the priority accorded the United States' claim under Section 3466 over other claims would necessarily extend to a state's claim for unemployment contributions (which at least was not a specific and perfected lien).[7] Clearly federal taxes could not be a "debt" within the meaning of that section so as to bar the claims of some creditors and not those of others.

Apart from the *Waddill Co.* case, however, which we think should be decisive, it is well settled that federal taxes are debts within the

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under Section 3466 of the Revised Statutes. *Matter of White Plains Oil Corp.*, 287 N. Y. 141; *In re Ever Krisp Food Products Co.*, 307 Mich. 182; *Lerman* v. *Lincoln Novelty Co.*, 130 N. J. Eq. 144; *Parks* v. *Central Door & Lbr. Co.*, 164 Ore. 363; *Contra: Rivard* v. *Bijou Furniture Co.*, 67 R. I. 251, modified, 68 R. I. 358.

[7] In this case the State of Illinois does not argue that its lien for unemployment compensation contributions was specific and perfected prior to the general assignment for the benefit of creditors, at which time the priority of the United States arose, and apparently concedes the point that it had no lien which would take precedence over the claims of the United States under Section 3466, if that section is held to apply to the claims.

[8] However, it is not conceded by the United States that a prior specific and perfected lien would defeat the priority of the United States under Section 3466. See *New York* v. *Maclay*, 288 U. S. 290; *United States* v. *Texas*, 314 U. S. 480; *United States* v. *Waddill Co.*, *supra*. In the companion case, No. 750, we argue that a prior specific lien does not divest the United States of priority under Section 3466.

meaning of Section 3466 (*Price* v. *United States*, 269 U. S. 492, 499; *Stripe* v. *United States*, 269 U. S. 503) and claims for such taxes have been accorded priority over competing state and local tax claims (*Spokane County* v. *United States*, 279 U. S. 80; *New York* v. *Maclay*, 288 U. S. 290; *United States* v. *Texas*, 314 U. S. 480). If the conditions of Section 3466 are otherwise satisfied, as we shall show they are here, the claims of the United States for federal insurance contributions and unemployment compensation taxes (and capital stock taxes as well) fall within the direction of Section 3466 that "the debts due the United States shall be first satisfied."

Consequently, only if Congress has otherwise provided that the federal insurance contributions taxes or the unemployment compensation taxes are to be excepted from the absolute priority granted by Section 3466, can there be justification for excluding such taxes from the scope of that section. But there is nothing in the express terms of either Title VIII or Title IX of the Social Security Act which relinquishes priority as to federal taxes accruing under those titles. On the contrary, instead of showing a policy of restricting the methods by which such taxes may be collected, Congress has provided for the adoption of all available methods of collection to these taxes. Section 807 (e) of the Social Security Act (Appendix, *infra*, p. 37) provided, with respect to Title VIII taxes:

> All provisions of law, including penalties, applicable with respect to any tax imposed by section 600 or section 800 of the Revenue Act of 1926, and the provisions of section 607 of the Revenue Act of 1934, shall, insofar as applicable and not inconsistent with the provisions of this title, be applicable with respect to the taxes imposed by this title.

A similar provision with respect to unemployment compensation (Title IX) taxes (making applicable to such taxes, however, the provisions of law with respect to any tax imposed only by Section 600 of the Revenue Act of 1926, c. 27, 44 Stat. 9), appears in Section 905 (b) of the Social Security Act (Appendix, *infra*, p. 38).

Section 800 of the Revenue Act of 1926 imposes documentary stamp taxes and Section 805 (b) thereof provides—

> All internal revenue laws relating to the assessment and collection of taxes are hereby extended to and made a part of this title [Title VIII—Stamp Taxes], so far as applicable, for the purpose of collecting stamp taxes omitted through mistake or fraud from any instrument, document, paper, writing, parcel, package, or article named herein.

Section 600 imposes excise taxes on certain articles and while there is no special provision in connection with that section alone relating to collection procedures, Article 23 of Treasury Regula-

tions 47 (March, 1926, revision), promulgated under Section 600 and 903 of the Revenue Act of 1926, provided in part:

> In collecting the excise taxes the commissioner has the benefit of all existing internal revenue laws. * * *

And Section 1100 of the Revenue Act of 1926 provides with respect to both Sections 600 and 800—

> All administrative, special, or stamp provisions of law, including the law relating to the assessment of taxes, so far as applicable, are hereby extended to and made a part of this Act.

Section 3466 of the Revised Statutes is plainly a law relating to the collection of taxes in the special situation of insolvency, and under the quoted provisions of the Revenue Act of 1926, that section would have been available to the United States as a collection measure in the case of excise and stamp taxes levied by Sections 600 and 800 of that Act. *Cf. United States* v. *Texas, supra;* and see *Wire Wheel Co.* v. *Fayette Bank & Trust Co.*, 30 F. 2d 318 (C. C. A. 7th), certiorari denied, 279 U. S. 873, where a claim for federal excise taxes on automobiles was held entitled to priority under Section 3466. It follows that Section 3466 is also available as a collection remedy with respect to the Title VIII and IX taxes.

Thus, instead of repudiating Section 3466, Congress took pains to show that the United States

could invoke the section as a means of securing collection from an insolvent taxpayer of the taxes imposed by the Social Security Act.* This result, of course, should also follow logically from the decisions of this Court holding that Section 3466 is to be construed liberally to effectuate its purpose of securing adequate public revenues. *United States* v. *Emory*, 314 U. S. 423, 426.

The State cites (Br. 10–11) *Cook County Nat. Bank* v. *United States*, 107 U. S. 445; *Mellon* v. *Michigan Trust Co.*, 271 U. S. 236; *United States* v. *Guaranty Tr. Co.*, 280 U. S. 478; and *United States* v. *Maxwell*, 307 U. S. 200, as authority that an implied intention to relinquish federal priority under Section 3466 may be drawn from inconsistent provisions of another statute. However, each of those decisions turned on specific provisions of the statute there under consideration, which have no counterpart in the Social Security Act, and did not involve the extraordinary claim which seems to be made here that Section 3466 is inapplicable only against a particular class of creditors; *viz.*, the States. Thus, in *Cook County Nat. Bank* v. *United States*, *supra*, involving claims against an insolvent national bank, not

* Since the State's argument is predicated entirely upon the joint interest of the Federal and State governments in the social security program, and that argument would have no application to private creditors, the State's argument implicitly recognizes that Section 3466 is applicable against all private creditors.

only did the act authorizing the formation of national banks establish the manner in which their assets were to be distributed if placed in receivership, but also the United States by statute had the right to demand and receive such security as the Secretary of the Treasury thought satisfactory for amounts deposited by the United States in national banks. In addition, for any deficiency in the security deposited to secure a bank's notes, the United States was to have a paramount lien on all its assets. In view of these provisions, the Court held that Congress intended the United States to look for security for its claims elsewhere than to Section 3466 in the case of national banks, and accordingly that Section 3466 had no application when a national bank became insolvent.

In *United States* v. *Guaranty Tr. Co.*, *supra*, the Court held that claims of the United States for loans made to carriers under the Transportation Act of 1920 were not to have priority, on two grounds: First, the purpose of the Act, which was to establish the general credit of carriers needing funds, and thus to preserve the transportation system, would be defeated by giving priority to the debts due the United States, since other persons would be reluctant to extend credit to carriers if their claims were to be subordinate to those of the United States; second, Congress gave specific evidence of its purpose not to rely upon

Section 3466 for repayment of the advances, since adequate security for the loans made by the United States was either required by law or left to the discretion of the President.

The statutory provisions under which this Court inferred that Congress did not intend Section 3466 to apply to the claims in those cases are not found in the instant case. The provisions of the Social Security Act are not designed to establish the credit of a taxpayer-debtor with the public generally, as was true of the statute under which loans were made by the United States in the *Guaranty Tr. Co.*, case, nor do they direct how the estate of an insolvent debtor liable for federal contributions or unemployment taxes is to be distributed. Neither are there provisions

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* The other two cases relied on seem entirely irrelevant to the question here. In *United States* v. *Moore*, *supra*, it was held only that Section 3466 is inapplicable to a general claim in bankruptcy transferred to the United States, or to which the United States was subrogated, after the filing of a petition in bankruptcy, because the rights of creditors are fixed as of the date of filing the petition. The case at bar involves no such question. *Mellon* v. *Michigan Trust Co.*, *supra*, involved a claim of the Director General of Railroads against an insolvent estate. The Court held that Section 3466 did not apply to give the Director's claim priority because he was subject to a statute which confined his substantive rights to those which a carrier would have had. To have permitted a preference under Section 3466 (a right which a carrier could not have) would have conflicted with the spirit and broad purpose of that statute. (P. 240.) There is, of course, no similar statute here, restricting the substantive rights of the United States.

in the Act under which the United States could provide itself with independent security for payment of such taxes. In fact, the taxing provisions of the Social Security Act are intended to operate primarily on solvent persons and there is no special provision for the case where a taxpayer becomes insolvent. Section 3466 operates solely in the latter situation. In consequence there is no basis for an inference that Congress intended to waive the priority of the United States under Section 3466 for collection of Title VIII and Title IX taxes in cases where the taxpayer has become insolvent.

The reasoning of *United States* v. *Emory*, 314 U. S. 423, confirms this conclusion. In that case a majority of this Court held that the provisions of the National Housing Act did not impliedly relinquish the priority under Section 3466, otherwise attaching to claims due under the Housing Act, even though the objective of the Act was to stimulate the building trades and increase employment. The Court said (pp. 432–433):

> The National Housing Act contains no reference to the liquidation of estates of insolvent borrowers, and consequently no direct inconsistency with Sec. 3466 is possible. The purpose of Title I was not the strengthening of the *general* credit of property owners, but the stimulation of the building trades by affording assurances to lending institutions in order to induce them

> to make loans for property improvements. No security was required of the borrowers, and the interest charge was low. Only the plainest inconsistency would warrant our finding an implied exception to the operation of so clear a command as that of Sec. 3466. We think such inconsistency is wholly wanting here.

Moreover, in no case of which we are aware has this Court ever implied an intention to abandon priority under Section 3466 with respect to claims arising under a revenue statute. Indeed, it seems that only the clearest Congressional language could compel such a result in the case of a tax, since the function of Section 3466 is the assurance of the public revenue (*Spokane County* v. *United States*, 279 U. S. 80, 92; *Price* v. *United States*, 269 U. S. 492, 500; dissenting opinion in *United States* v. *Emory*, 314 U. S. 423, 434). The dissenting opinion in *United States* v. *Emory*, *supra* (p. 435), deemed it of special significance that the National Housing Act there before the Court "is not a revenue measure."

Despite the fact that there are no provisions in the Social Security Act, dealing either with the taking of security by the United States or the distribution of the assets of an insolvent taxpayer, which could be construed as inconsistent with the provisions of Section 3466, the State argues that it is incompatible with the general policy and social objectives evidenced in the Social Security

Act to give priority to federal tax claims under that Act over state claims for contributions arising under a state unemployment compensation statute. The State's claim appears to be in summary that in enacting the Social Security Act Congress deemed the accumulation of state funds for unemployment compensation to be of such paramount importance that it intended to relinquish the Section 3466 priority with respect to the federal taxes. (See Br. 12–13.) As already pointed out, only the plainest evidence of such an intention would suffice to remove the priority afforded the federal claims by Section 3466. Not only is such evidence lacking here, but on the contrary Congress has provided, see *supra*, pp. 12–14, that all available collection measures are applicable to the federal taxes.

In any case, it is not to be inferred that Congress was concerned primarily with accumulating state unemployment contributions funds at the expense of federal funds. The Social Security Act did not legislate with respect to state unemployment compensation funds alone. It set up a system for payment by the United States of old age benefits (Title II), and authorized the appropriation of amounts annually as grants to the states (whose plans conformed to the standards set up in the Act), for old age assistance (Title I), for administration of unemployment compensation laws (Title III), and in aid of dependent

children (Title IV), maternal and child welfare (Title V), public health (Title VI), and the blind (Title X).[11] Manifestly such a program required large federal funds and Congress levied the Title VIII and IX taxes to provide additional general revenue, which, when appropriated,[12] would supply funds to carry out this program. See *Helvering* v. *Davis*, *supra*; *Steward Machine Co.* v. *Davis*, *supra*. The fact that Congress deemed it in the public interest for states to accumulate unemployment compensation funds may be admitted, but it was also in the public interest to accumulate federal revenue.

In light of the need for revenue, no implication that Congress intended to abandon its long existing policy of assuring the federal revenues, by making its claims payable first from the assets of

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[11] As H. Rep. No. 615, 74th Cong., 1st Sess., p. 3 (1939-2 Cum. Bull. 600, 601), states:

> * * * [The Act] deals with four major subjects. Old-age security, unemployment compensation, security for children, and public health. These subjects are all closely related, all being concerned with major causes of dependency. Together they constitute an important step in a well-rounded, unified, long-range program for social security.

[12] As already pointed out, the amounts collected as taxes under the Act were not earmarked, but went into the general funds of the Treasury. The Act contained the authority for appropriations to be made to carry out the provisions of the Act, but separate appropriation acts were necessary. See *Steward Machine Co.* v. *Davis*, 301 U. S. 548, 574, 577-578, 585; *Helvering* v. *Davis*, 301 U. S. 619, 635-636.

an insolvent taxpayer, arises from the fact that it encouraged the states to collect contributions for an unemployment compensation fund and that the burden on the Federal Treasury may have been lightened to some extent thereby.

Nor can the provision for allowance of a credit against the Title IX taxes be construed as a Congressional direction that the federal taxes and the state contributions shall share *pro rata* in an insolvent estate. Title IX levies a federal tax on employers in the first instance but permits a credit against this tax, up to 90%, thereof, of amounts actually paid to the state as contributions. However, until payment is made to a state, no credit is allowable and the entire federal tax is payable to the United States.[1] As this

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[1] S. Rep. No. 628, 74th Cong., 1st Sess., pp. 12-13, (1939-2 Cum. Bull. 611, 612), states with respect to the credit:

> This credit, however, is allowed only up to 90 percent of the Federal tax, 10 percent being payable into the Federal Treasury in any event.
>
> This tax offset device is modeled after the provision in the Federal estate tax law, under which a credit is allowed up to 80 percent of the Federal tax for amounts paid under State inheritance tax laws. With a uniform tax and this offset device, employers in all States will be put in an equal competitive position. No State can gain any advantage through failing to establish an unemployment compensation system. * * *

Cf. *Florida* v. *Mellon*, 273 U. S. 12, in which this Court sustained the validity of the federal estate tax and the credit provision, irrespective of whether or not the 80% credit against the federal tax for payments of state inheritance tax was or could be taken in a particular case.

Court declared in *United States* v. *New York*, 315 U.S. 510, 517:

> The amount of the tax assessable under Section 901 is definite and fixed, once the single variable, the total of the wages paid during the year, is determined. Although the employer is free to obtain a credit against it by contributing to his state fund, it cannot be said that it is any less a tax because the employer has failed, either through choice or lack of resources, to make such a contribution. Either the state or the federal government must provide the money to meet the requirements of relief to the unemployed. By his contributions to the State, an employer has diminished the demand upon the financial resources of the federal government. But by his failure to contribute, the employer has increased this demand and sharpened the necessity for obtaining the revenues required to satisfy it. The effort by the United States to obtain the revenue by denying the credit must be regarded as the levying of a tax and not as the exaction of a penalty.

Consequently, the fact that Congress provided for the reduction of Title IX taxes by the credit does not alter the nature of the tax, nor does it minimize the importance of this tax to the Federal Government as a revenue producing measure.

The provision for the credit means no more than that Congress was willing for the Federal Government to surrender such part of the amount (but not in excess of 90%) it might otherwise collect as revenue under Title IX, as was equal to the amount collected by a state under its own laws. It does not signify any intention to elevate the amounts which the state collects to the status of federal taxes, or to destroy the clear distinction between the claim of a state for contributions and that of the Federal Government for the taxes due it, which this Court recognized in *United States* v. *New York*, 315 U. S. 510. And certainly the provision for allowance of a credit against the Title IX taxes in certain circumstances does not evidence a broad purpose generally to relinquish priority as to the Title IX tax remaining due after the allowable credit is deducted, or as to the full amount of the Title VIII taxes, which are unfettered by any provision for credit of state contributions.

Furthermore, the credit is not allowed to the state but only to the employer who is liable for the federal tax. The state's right is only to collect whatever amount is due as contributions under its own law. It neither benefits from the credit nor is concerned with the allowance or amount thereof. The credit is purely a federal matter. Accordingly, the state would seem to have no standing to argue that the credit pro-

vision incorporates the contributions imposed by its own law into the federal system of taxes.

In any event, if the conclusion could be reached that Congress intended to relinquish the priority of Title IX taxes on the theory that the state contributions are in the same class because they may be credited against such taxes, the reasoning supporting such a conclusion would be inapplicable to the Title VIII taxes. These taxes are not reducible by a credit and stand entirely alone. They are provided for in a different title of the Act and were levied for a different purpose than were the Title IX taxes. *Helvering* v. *Davis*, *supra*. Any implication arising from the credit provision in the case of Title IX taxes that priority has been surrendered certainly cannot be carried over to a different kind of tax, which is not subject to the credit. Yet the State's argument must extend to a claimed waiver of federal priority with respect to Title VIII taxes. This necessarily follows because the federal claim under Title VIII is sufficiently large to exhaust all of the available funds.

If, by its assertion that the claim of the State is tantamount to a claim of the United States because it serves a federal purpose (See Br. 13, 22–23), the State means to imply that its claim has the status of a debt due the United States within Section 3466, we deny the suggestion. The claim of the State arose under one of its own

laws.[13] The United States could not enforce such a claim, and hence the claim of the State does not have the status of a debt due the United States, as do the federal taxes, for purposes of Section 3466.

Although the state contributions which were used to create an unemployment compensation fund, to be held by the Secretary of the Treasury, upon which the State could draw for compensation payments to its own citizens, may have relieved the Federal Government of appropriating amounts from its own revenue for that purpose, this circumstance does not convert the contributions collected by the State into federal taxes, nor evidence an intention on the part of Congress that the contributions are to be subject to the same collection procedures as are the federal taxes. The intention to depart so radically from the well defined distinction between federal and state taxes, and the sovereign authorities which collect them, would have to be evidenced by more than a general assertion that a common social objective underlies both. Cf. *United States* v. *New York, supra.*

[13] The Illinois Unemployment Compensation Act, effective July 1, 1937 (Laws of 1937, p. 571; Jones Illinois Statutes Annotated (1944), Secs. 45.128–45.161), pursuant to which employers of eight or more for the years 1937–1939, and employers of six or more for the year 1940 and thereafter (Sec. 2 (3)) became liable to pay "contributions" to the State at specified rates which respect to wages payable for employment.

Although this case involved the priority and allowance of claims under the Bankruptcy Act, it establishes that the claims of the United States for Title VIII and Title IX taxes and the claim of a state for contributions are separate and distinct claims. It is also implicit in that decision that the claims of the United States are to be preferred over those of the state for contributions, since the method of computing the allowable credit approved therein assumed that the United States was entitled to receive 10% of the Title IX tax actually due (rather than only 10% of the amount available for distribution), even though this resulted in the state receiving less than it would otherwise be entitled to, if the other method of computation had been followed. The contention here that the claims of the United States and the State should share equally is clearly inconsistent with the *New York* case.

Indeed the State's position is self-contradictory, for although the State argues that the state contributions are so much like the federal taxes as to preclude the application of Section 3466 to give priority to the federal taxes, yet at the same time it contends that the state contributions are sufficiently distinct from the federal taxes as to take priority over them by virtue of the lien given by State law.

Moreover, to classify the State's claim as of federal origin would seriously interfere with, and

probably definitely prevent the states from exercising their own notions of relative priorities. Some states accord higher priorities to their own real property taxes than they do to their social security taxes.[14] If the state social security taxes should be recognized as federal levies they would necessarily be accorded the same priorities as other federal taxes.

The right of the states to establish relative priorities for different kinds of their own taxes indicates the danger, inherent in the State's argument here, that a waiver of Federal priority in favor of state social security taxes may redound instead to the benefit of some other kind of state levy. Thus the Federal Government might stand aside for a state social security claim, but the money could be used instead to satisfy a different state claim which had a higher priority under state law. Cf. *Spokane County* v. *United States*, 279 U. S. 80, 91.

Our position in this case is fully supported by *Matter of White Plains Oil Corp.*, 287 N. Y. 141. There an insolvent corporation made an assignment of its assets for the benefit of creditors. The United States presented claims for federal insurance contributions taxes and unemployment taxes and the State of New York presented a claim for

[14] This is true in Illinois. *French* v. *Toman*, 375 Ill. 389, 393. Moreover, the Director's lien will be junior to other State claims which are earlier in time. Illinois Attorney General's Opinions, 1939, No. 37, pp. 135, 143.

unpaid unemployment compensation contributions. The right of the United States to full priority of payment of the insurance contributions taxes due it was not challenged (p. 143), nor did the State contend that the Title IX claim was not entitled to priority under Section 3466. It argued, however, that this claim should be allowed only for 10% of the total amount since the contributions due the state but unpaid, should be credited against the Title IX claim to the extent of 90% thereof. The New York Court of Appeals unanimously rejected this contention and held that the United States was entitled to full priority for all of the Title IX taxes due it, even though if the estate were solvent, the federal claim would be reduced to 10%, and even though by asserting the full amount of its claim nothing whatever remained for payment of the State claim.

Also, in *In re Ever Krisp Food Products Co.*, 307 Mich. 182, the court held that the claims of the United States for Title VIII and Title IX taxes and for capital stock taxes had priority under Section 3466 of the Revised Statutes over a claim for state contributions of the Michigan Unemployment Compensation Commission. Although the Commission contended that Section 3466 was inapplicable to the United States claim "in view of the congressional intent expressed in the social security act" (p. 195), the court did not discuss the contention but rested its decision on the ground that the United States had priority because the claim of the Commission was not sup-

ported by a prior specific and perfected lien. See also *Lerman* v. *Lincoln Novelty Co.*, 130 N. J. Eq. 144, in which it was held that the claim of the United States for social security tax had priority under Section 3466 over all state claims, including a claim for unemployment insurance contributions. And cf. *United States* v. *Waddill Co.*, 323 U. S. 353, in which it was conceded that the claim of the Virginia Unemployment Compensation Commission for contributions was subordinate to that of the United States for unpaid federal unemployment compensation taxes.

Rivard v. *Bijou Furniture Co.*, 67 R. I. 251, modified in 68 R. I. 358, is contrary to our position here. The lower court recognized that its decision conflicted with the *Rivard* case but declined to follow it. We believe the *Rivard* decision is erroneous for reasons already given. The conclusion was there reached that a state claim for unemployment compensation contributions was entitled to share *pro rata* with federal insurance contributions taxes and capital stock taxes, despite the provisions of Section 3466 that the federal debts are to be satisfied first. It is not clear whether the Supreme Court of Rhode Island meant to hold that Section 3466 did not apply to the federal claims at all [15] (see 67 R. I. 259, where the court said: "It is therefore our opinion that

[15] Such a holding could scarcely be made in the case of the capital stock taxes, which of course have not the remotest connection with the state contributions.

said sec. 3466 is inapplicable in this case to the claims now under consideration."), or whether, as the second opinion, 68 R. I. 358, seems to indicate, the theory of the court was that the state contributions were intended by Congress to be on a par with the federal insurance contributions taxes and other federal taxes under Section 3466.[16] But in either event, the court ordered a distribution of the insolvent estate in a way contrary to the provision by Congress. There is neither justification for ignoring Section 3466 entirely nor for amending the section by adding state claims for contributions to the class of debts having priority under Section 3466.

The decision is not in harmony with this Court's decisions in *United States* v. *Waddill Co., supra,* and *United States* v. *New York, supra,* as has been seen; and in denying priority to the federal tax claims over state claims for contributions, it conflicts with *Matter of White Plains Oil Corp.;*

[16] The court also held that the part of the federal and state claims representing employees' taxes and contributions were special trust funds held by the employer for the United States and the State, respectively, and were payable even ahead of any claims under Section 3466. In the instant case the record does not show whether any part of the federal insurance contributions tax represented employees' taxes collected by the employer, but to the extent that the claim of the United States may have covered employees' taxes, it is clear that this is payable first, since the employer held the employees' tax as a special fund in trust for the United States. See Sections 802 and 807 (c) of the Social Security Act and Section 607 of the Revenue Act of 1934 (Appendix, *infra,* pp. 36, 37, 38–39).

supra; In re Ever Krisp Food Products Co., supra; and *Lerman* v. *Lincoln Novelty Co., supra,* which we believe apply the correct rule.

It is therefore submitted that not only the claim of the United States for federal insurance contributions taxes, as the lower court held, but also its claim for federal unemployment compensation taxes as well, are debts due the United States within the meaning of Section 3466 of the Revised Statutes. The State has not argued that the claim for capital stock tax is not a debt; it is assumed that it concedes this point, since it makes no argument to the contrary. In any case, this claim, as a tax, is a debt entitled to priority under Section 3466; as the decisions of this Court cited above make plain.

II

UNDER SECTION 3466 OF THE REVISED STATUTES THE UNITED STATES IS ENTITLED TO PRIOR PAYMENT OF ITS CLAIMS FOR TAXES

The foregoing argument shows that the capital stock taxes, federal insurance contributions taxes, and federal unemployment compensation taxes owing to the United States by the Advertising Review Publishing Company are debts within the meaning of Section 3466 and, if the debtor was insolvent, the language of that section requires that these taxes are to be first satisfied out of the debtor's assets.[12]

[12] The amount available, however, is not even sufficient to satisfy the insurance contributions tax alone.

In January, 1939, the debtor here made a voluntary assignment of all its assets to a trustee for the benefit of creditors. This, of course constituted an act of insolvency within the meaning of Section 3466 (cf. *United States* v. *Waddill Co.*, 323 U. S. 353; *Bramwell* v. *U. S. Fidelity Co.*, 269 U. S. 483; *United States* v. *Oklahoma*, 261 U. S. 253) and the State makes no contention to the contrary.

Although the State relies on the lien given it by state law as entitling it to priority in the event that Section 3466 does not apply to the claims of the United States for social security taxes[18] (Br. 26–28), the State makes no contention that if Section 3466 does apply to the claims of the United States for Title VIII and Title IX taxes, as we have shown it does, its lien was specific and perfected on the date of the voluntary assignment, at which time the priority of the United States attached. Indeed, prior to the time of the assignment the State had taken no action whatever with respect to the lien given it by Section 26 (a) of the Unemployment Compensation Act of Illinois (Jones' Illinois Statutes

[18] As pointed out above, the United States also had a small claim for capital stock tax, which is not affected by the State's argument with respect to the insurance contributions and employment compensation taxes and which is a debt in any event within Section 3466. The claim for capital stock tax has priority under Section 3466, therefore, wholly without regard to whether or not priority is accorded to the federal contributions and employment taxes.

Annotated (1944), Sec. 45.154), although subsequent thereto it did institute a suit to foreclose the lien. It is well settled that an inchoate lien of this sort does not defeat the priority established in favor of the federal claims by Section 3466, as the State apparently concedes. *United States* v. *Waddill Co.*, 323 U. S. 353; *United States* v. *Texas*, 314 U. S. 480; *New York* v. *Maclay*, 288 U. S. 290; *Spokane County* v. *United States*, 279 U. S. 80.

CONCLUSION

In view of the foregoing, the judgment of the Supreme Court of Illinois should be affirmed.

Respectfully submitted,

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MARCH 1946.

APPENDIX

Revised Statutes:

SEC. 3466. Whenever any person indebted to the United States is insolvent, or whenever the estate of any deceased debtor, in the hands of the executors or administrators, is insufficient to pay all the debts due from the deceased, the debts due to the United States shall be first satisfied; and the priority hereby established shall extend as well to cases in which a debtor, not having sufficient property to pay all his debts, makes a voluntary assignment thereof, or in which the estate and effects of an absconding, concealed, or absent debtor are attached by process of law, as to cases in which an act of bankruptcy is committed. (31 U. S. C. 191.)

Social Security Act, c. 531, 49 Stat. 620:

SEC. 801. In addition to other taxes, there shall be levied, collected, and paid upon the income of every individual a tax equal to the following percentages of the wages (as defined in section 811) received by him after December 31, 1936, with respect to employment (as defined in section 811) after such date:

(1) With respect to employment during the calendar years 1937, 1938, and 1939, the rate shall be 1 per centum.

(2) With respect to employment during the calendar years 1940, 1941, and 1942, the rate shall be 1½ per centum.

(3) With respect to employment during the calendar years 1943, 1944, and 1945, the rate shall be 2 per centum.

(4) With respect to employment during the calendar years 1946, 1947, and 1948, the rate shall be 2½ per centum.

(5) With respect to employment after December 31, 1948, the rate shall be 3 per centum. (42 U. S. C. 1001.)

SEC. 802. (a) The tax imposed by section 801 shall be collected by the employer of the taxpayer, by deducting the amount of the tax from the wages as and when paid. Every employer required so to deduct the tax is hereby made liable for the payment of such tax, and is hereby indemnified against the claims and demands of any person for the amount of any such payment made by such employer. * * * (42 U. S. C. 1002.)

SEC. 804. In addition to other taxes, every employer shall pay an excise tax, with respect to having individuals in his employ, equal to the following percentages of the wages (as defined in section 811) paid by him after December 31, 1936, with respect to employment (as defined in section 811) after such date:

(1) With respect to employment during the calendar years 1937, 1938, and 1939, the rate shall be 1 per centum.

(2) With respect to employment during the calendar years 1940, 1941, and 1942, the rate shall be 1½ per centum.

(3) With respect to employment during the calendar years 1943, 1944, and 1945, the rate shall be 2 per centum.

(4) With respect to employment during the calendar years 1946, 1947, and 1948, the rate shall be 2½ per centum.

(3) With respect to employment after December 31, 1948, the rate shall be 3 per centum. (42 U. S. C. 1004.)

SEC. 807. * * *

(c) All provisions of law, including penalties, applicable with respect to any tax imposed by section 600 or section 800 of the Revenue Act of 1926, and the provisions of section 607 of the Revenue Act of 1934, shall, insofar as applicable and not inconsistent with the provisions of this title, be applicable with respect to the taxes imposed by this title. (42 U. S. C. 1007.)

SEC. 901. On and after January 1, 1936, every employer (as defined in section 907) shall pay for each calendar year an excise tax, with respect to having individuals in his employ, equal to the following percentages of the total wages (as defined in section 907) payable by him (regardless of the time of payment) with respect to employment (as defined in section 907) during such calendar year:

(1) With respect to employment during the calendar year 1936 the rate shall be 1 per centum;

(2) with respect to employment during the calendar year 1937 the rate shall be 2 per centum;

(3) With respect to employment after December 31, 1937, the rate shall be 3 per centum. (42 U. S. C. 1101.)

SEC. 902. The taxpayer may credit against the tax imposed by section 901 the amount of contributions, with respect to employment during the taxable year, paid by him (before the date of filing his return for the taxable year) into an unemployment fund under a State law. The total credit allowed to a taxpayer under

this section for all contributions paid into unemployment funds with respect to employment during such taxable year shall not exceed 90 per centum of the tax against which it is credited, and credit shall be allowed only for contributions made under the laws of States certified for the taxable year as provided in section 903. (42 U. S. C. 1102.)

SEC. 905. * * *

(b) Not later than January 31, next following the close of the taxable year, each employer shall make a return of the tax under this title for such taxable year. Each such return shall be made under oath, shall be filed with the collector of internal revenue for the district in which is located the principal place of business of the employer, or, if he has no principal place of business in the United States, then with the collector at Baltimore, Maryland, and shall contain such information and be made in such manner as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may by regulations prescribe. All provisions of law (including penalties) applicable in respect of the taxes imposed by section 600 of the Revenue Act of 1926, shall, insofar as not inconsistent with this title, be applicable in respect of the tax imposed by this title. * * * (42 U. S. C. 1105.)

Revenue Act of 1934, c. 277, 48 Stat. 680:

SEC. 607. ENFORCEMENT OF LIABILITY FOR TAXES COLLECTED.

Whenever any person is required to collect or withhold any internal-revenue tax from any other person and to pay such tax over to the United States, the amount

of tax so collected or withheld shall be held to be a special fund in trust for the United States. The amount of such fund shall be assessed, collected, and paid in the same manner and subject to the same provisions and limitations (including penalties) as are applicable with respect to the taxes from which such fund arose.

U. S. GOVERNMENT PRINTING OFFICE: 1946

SUPREME COURT OF THE UNITED STATES.

No. 749.—October Term, 1945.

People of the State of Illinois, *ex rel.* Robert L. Gordon, Director of Labor, Petitioner,
vs.
The United States of America.

On Writ of Certiorari to the Supreme Court of the State of Illinois.

[April 22, 1946.]

Mr. Justice Black delivered the opinion of the Court.

In this case the Supreme Court of Illinois held that certain tax claims of the federal government against an insolvent taxpayer must be satisfied in full before the State of Illinois can recover amounts due as taxes under its Unemployment Compensation Act. 391 Ill. 29. This decision is substantially in conflict with that of the Supreme Court of Rhode Island in *Reynal v. Bijou Furniture Company*, 67 R. I. 251, 68 R. I. 358, and we granted certiorari to resolve this conflict.

The claim of the United States is for federal unemployment compensation taxes under Title 9 and federal insurance contributions taxes under Title 8 of the Social Security Act, 49 Stat. 620.[1] The priority claimed by the United States rests on R. S. 3466, which provides in part that "Whenever any person indebted to the United States . . . not having sufficient property to pay all his debts, makes a voluntary assignment" of his property "the debts due to the United States shall be first satisfied."

The state concedes that the facts here bring the United States' tax claims within the general priority provisions of Section 3466. The taxpayer while insolvent had made a voluntary assignment of all his property for the benefit of creditors. And it is well settled that taxes are debts within the meaning of Section 3466. *United States v. Wadill*, 323 U. S. 353, 357. The state's sole contention is that the Social Security Act evinces a Congressional purpose to free state unemployment tax claims from the general priority provisions of Section 3466.

[1] A small part of the government's claim was for capital stock taxes but this fact is of no significance here.

The state draws its inference not from an express declaration of Congressional purpose, but from what it deems to be broad implications behind the general scheme of the Social Security Act. The contention is that enforcement of priorities over state unemployment compensation tax claims would weaken state unemployment compensation funds and thus tend to frustrate the manifest purpose of Congress to foster, in the national interest, soundly financial and stable state unemployment compensation systems. The state points to the following as showing Congress' interest in state systems. Title 9 of the Social Security Act contains provisions intended to induce states to set up sound unemployment compensation in accordance with Congressionally prescribed standards. To this end state systems that meet such standards are permitted to build up their own funds by collection from employers within the state of 90% of the tax these employers would otherwise have to pay to the federal government. State funds must be paid into the United States Treasury, to be credited to a special fund, and can be withdrawn only for paying unemployment benefits. Furthermore, the federal portion of unemployment compensation taxes can be used to help states pay administrative expenses. And Congress, since passage of the original Act, has enacted legislation guaranteeing the solvency of state funds. 58 Stat. 790. All of these facts, and some others to which the state refers, are said to show that the paramount purpose of the social security legislation was to treat unemployment relief as a problem to be solved by the federal government by its assumption of the primary burden of making state systems a success.

We agree that the social security legislation provides a method for accomplishing state and federal unemployment relief systems integrated in plan, function, and purpose, and that sound state systems are essential to complete success of the Congressional plan. But we cannot agree that Congress thereby intended in effect to amend Section 3466, by making its priority provisions inapplicable to state unemployment tax claims. For while the state and federal governments were to cooperate, the underlying philosophy of the federal Act was to keep the state and federal systems separately administered. The Act nowhere indicates a purpose to treat a state unemployment claim as the state here urges us to treat its claim—"tantamount to a claim of the United States

Furthermore, Sections 807 (c) and 945 (b) of the federal Act and the provisions they incorporated by reference, made applicable to social security taxes all other provisions of law relating to the assessment and collection of other taxes unless such other remedies are inconsistent with the Social Security Act. While there is no evidence that Congress in these sections and Section 3466 specifically in mind, these provisions indicate that Congress intended, so far as practicable, to apply to social security taxes all of the remedies available to the federal government in collecting other taxes. Section 3466 provides one of these remedies. Since, as has been indicated, it is not inconsistent with other specific express language or purposes of the Social Security Act, it must be applied here.

Previous decisions of this Court relied on by the state do not support its contention. Those cases, insofar as they held that Section 3466 did not give the United States priority over certain other types of claims, dealt with laws bearing little or no resemblance to the present Act. *Cook County National Bank v. United States*, 107 U. S. 445; *United States v. Guaranty Trust Company*, 280 U. S. 47; *United States v. Emery*, 314 U. S. 423, 431-432. We find no such inconsistency here. And only the plainest inconsistency could warrant our finding an implied exception to the operation of so clear a command as that of Sec. 3466. *United States v. Emery*, *supra*, 433.

Affirmed.

Mr. Justice JACKSON took no part in the consideration or decision of this case.